



FEDERAL ELECTION COMMISSION
Washington, DC 20463

By U.S. Mail
Spanky LLC
Attn: David Loftus
800 N. Whittier Dr.
Beverly Hills, CA 90210

MAY 11 2016

RE: MUR 7053 (formerly RR
14L-02)
Spanky LLC

Dear Mr. Loftus:

On April 26, 2016, the Federal Election Commission found that there is reason to believe Spanky LLC violated 52 U.S.C. § 30116(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). This finding was based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 52 U.S.C. § 30109(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for

pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.²

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Peter Reynolds, the staff attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Chairman Matthew Petersen

Enclosures

Factual and Legal Analysis

² The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENTS: Spanky, LLC

RR 14L-02

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7 **I. INTRODUCTION**

8 This matter was generated by the Commission's Reports Analysis Division in the normal
9 course of carrying out its supervisory functions and referred to the Office of the General
10 Counsel.¹ The information in the referral shows that Spanky, LLC, made excessive contributions
11 totaling \$198,200. Accordingly, the Commission elects to open a MUR and finds reason to
12 believe that Spanky, LLC, violated 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)) and
13 11 C.F.R. § 110.1(b).²

14 **II. FACTS**

15 Flemming for Congress and Martha Flemming in her official capacity as treasurer (the
16 "Committee") was the authorized committee for Stanley Flemming during his 2012
17 Congressional primary campaign in Washington's 10th Congressional district.³ The Committee
18 received two loans totaling \$200,700 from "Spanky, LLC," a limited liability company that was
19 organized in California on February 13, 2012.⁴ The first loan was made on March 6, 2012, for

¹ Reports Analysis Division, Referral of Flemming for Congress, 14L-02 (February 24, 2014) ("RAD Referral").

² On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

³ See Statement of Organization (Dec. 16, 2011).

⁴ David Loftus filed the response on behalf of Spanky and is listed as its registered agent, but the identity of Spanky's principal(s) is (are) not known. <http://kepler.sos.ca.gov/>. Spanky was reportedly formed by Sherry Hackett, the widow of the late comedian Buddy Hackett. Mike Baker, *Atypical Loan Aids Wash. Congressional Hopeful*, THE SEATTLE TIMES, Aug. 1, 2012, available at http://seattletimes.com/html/localnews/2018823410_apwa10thdistrictloan1stldwritethru.html. In the response filed on behalf of Spanky, Loftus explains that the "Flemming campaign" approached him for a loan and "after receiving advise [sic] from legal counsel, Spanky, llc [sic] funded a loan to the campaign and Stan Flemming." Spanky Resp. at 1.

1 \$100,700 ("March Loan"), and the second loan was made on June 28, 2012, for \$100,000 ("June
2 Loan").⁵ On July 5, 2012, the Committee made a \$150,000 disbursement to Spanky, which it
3 reported as repayment on the March Loan.⁶

4 The Reports Analysis Division ("RAD") sent a series of Requests for Additional
5 Information ("RFAI") to the Committee regarding the loans which notified the Committee that
6 the loans appeared to constitute excessive contributions, asked whether Spanky was treated as a
7 corporation or as a partnership for tax purposes, and asked the Committee to file a Schedule C-1
8 detailing the terms of the loan or provide other clarifying information.⁷ In response to these
9 questions, the Committee asserts that "the campaign was told Spanky is treated for tax purposes
10 as a partnership and not a corporation. Spanky was formed for the purpose of funding various
11 projects including but not limited to political campaigns. The loan to Flemming for Congress
12 was not the first loan nor is it the only or last loan from this group."⁸

13 Ultimately, RAD informed the Committee that it would be referred for further
14 Commission action if the excessive contributions were not refunded.⁹ Stanley Flemming
15 contacted RAD and stated that he wished to terminate the Committee, and RAD informed him
16 that the Committee could not terminate until the issue relating to the apparently impermissible

⁵ See Committee 2012 April Quarterly Report, 11; Committee 2012 July Quarterly Report, 11. Spanky states in its response that the June Loan was for \$150,000, and the July repayment was for \$200,000. Spanky Resp. at 1. Spanky did not include any supporting documentation for these figures.

⁶ See Committee 2012 Pre-Primary Report, 12, 16; Committee Termination Report, 7-8, 12-17 (Nov. 14, 2013).

⁷ RFAI – Committee 2012 April Quarterly Report (Sep. 19, 2012); RFAI – Committee 2012 April Quarterly Report (Aug. 7, 2013); RFAI – Committee 2012 July Quarterly Report (Sep. 19, 2012); RFAI – Committee 2012 July Quarterly Report (Aug. 7, 2013).

⁸ Form 99, Flemming for Congress (Oct. 24, 2012). The Committee also amended its 2012 July Quarterly Report to include a memo text clarifying that Spanky is treated as a partnership for tax purposes and not a corporation. See Amended July 2012 Quarterly Report, 19.

⁹ RAD Referral at 5.

loans from Spanky could be resolved.¹⁰ The Committee submitted a 2013 Termination Report, which disclosed a \$60,000 repayment to Spanky made on August 30, 2013, and included Schedules C and C-1 for the total of \$200,000 that Spanky loaned to the committee and copies of the Loan Agreement and Promissory Note for the \$100,700 March Loan from Spanky.¹¹

III. ANALYSIS

A contribution is any gift, subscription, *loan*, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.¹²

A loan is a contribution at the time it is made and is a contribution to the extent it remains unpaid¹³ unless it fits within an exception from the definition of contribution.¹⁴ A loan that exceeds the contribution limits of 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a) and 11 C.F.R. § 110 (\$2,500 at the time Spanky made the loans to the Committee) is unlawful whether or not it is repaid.¹⁵ A contribution from an LLC that elects to be treated as a partnership shall be attributed to its members in direct proportion to their share of the profits, or by agreement of the partners, subject to restrictions,¹⁶ or, in the case of a single-member LLC, to its sole member.¹⁷

¹⁰ *Id.*

¹¹ Termination Report, Flemming for Congress (Nov. 14, 2013). In response, RAD reiterated through an RFAI and by phone conversation with Flemming that the Committee would not be permitted to terminate until all outstanding issues were resolved. RAD Referral at 4 (Flemming for Congress).

¹² 52 U.S.C. § 30101(8)(A)(i) (emphasis added) (formerly 2 U.S.C. § 431(8)(A)(i)).

¹³ *Id.* § 100.52(b)(2).

¹⁴ See, e.g., 52 U.S.C. § 30101(8)(B)(vii) (formerly 2 U.S.C. § 431(8)(B)(vii)), 11 C.F.R. § 100.82 (the term "contribution" does not include loans made by a State bank, federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration); 52 U.S.C. § 30101(8)(B)(xiv) (formerly 2 U.S.C. § 431(8)(B)(xiv)), 11 C.F.R. § 100.83 (the term "contribution" does not include loans derived from lines of credit available to the candidate).

¹⁵ 11 C.F.R. § 100.52(b)(1).

¹⁶ *Id.* § 110.1(g)(2), (e)(1)-(2).

Contributions which on their face exceed the contribution limitations must be redesignated, reattributed, or refunded within 60 days of receipt.¹⁸

The loans from Spanky to the Committee were contributions because it does not appear that any exceptions to the definition of contribution apply. Specifically, no available information suggests that Spanky is a state bank or federally chartered or insured depository institution such that it may make loans that are exempt from the definition of contribution under 11 C.F.R. § 100.82. Nor is there information to suggest that the loans to the Committee derived from lines of credit available to the candidate such that they would be exempt from the definition of contribution under 11 C.F.R. § 100.83.¹⁹

Further, the amounts of the loans were in excess of the Act's limits.²⁰ The Committee asserts that Spanky is taxed as a partnership.²¹ Based on this information, Spanky could lawfully contribute \$2,500 to the Committee for the 2012 Primary Election.²² In that case, the \$100,700 March Loan exceeded the Act's limit by \$98,200, and all \$100,000 of the June Loan exceeded the Act's limit.²³ Thus it appears that Spanky made, and the Committee accepted, excessive

¹⁷ *Id.* § 110.1(g)(4).

¹⁸ *Id.* § 103.3(b)(3).

¹⁹ The exemption in section 100.83 was created in deference to the "various lines of credit" offered by "commercial banks" to their customers, *see* Explanation & Justification, Brokerage Loans and Lines of Credit, 67 Fed. Reg. 38,353 (June 4, 2002), but as noted above, Spanky, so far as we know, is not a "commercial bank." Further, the Commission has noted that even though section 100.83 exempts brokerage loans, credit card advances, and other lines of credit extended to candidates from the requirements of bank loans, "[i]t is important to note that [the requirements of bank loans as set forth in 100.82] will still apply to all loans and lines of credit made to a political committee and to conventional bank loans made to a candidate." *Id.* (emphasis added).

²⁰ 52 U.S.C. § 30116 (formerly 2 U.S.C. § 441a); 11 C.F.R. § 110.

²¹ Spanky, LLC's response to the referral is silent as to whether it is taxed as a partnership or a corporation.

²² 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)); 11 C.F.R. § 110.1(b).

²³ *Id.*

1 contributions.²⁴ However, the Committee's July repayment of \$150,000 for the March loan
2 occurred 121 days after receipt of the loan, so it provided a late remedy for the \$98,200
3 excessive amount of the March Loan.²⁵ The Committee also made the repayment seven days
4 after it received the June Loan from Spanky, so the balance of the repayment for the March loan
5 (\$51,800) provided a timely remedy for the June Loan, leaving an excessive balance of \$48,200
6 from the June Loan. Further the Committee's August 2013 repayment of \$60,000 provided a
7 late remedy for the remaining \$48,200 of the June Loan. Thus the total amount of Spanky's
8 excessive contributions to the Committee that was not refunded within 60 days is \$146,400
9 (\$98,200 + \$48,200).

10 Based on this information, the Commission finds reason to believe that Spanky, LLC,
11 violated 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)) by making an excessive
12 contribution.

²⁴ See MUR 5496 (Huffman for Congress) (\$100,000 loan from the committee's treasurer to the candidate, then to the committee, was a section 30116 (formerly section 441a) violation by the treasurer); MUR 5685 (Joe Turnham for Congress) (loan from candidate's father/treasurer to candidate, then to committee, was a section 30116 (formerly section 441a) violation by the father/treasurer).

²⁵ RAD Referral, Attachment 3, note 1; see Committee 2012 Pre-Primary Report, 16.